

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Section 68.4(a) of the Commission's Rules)	WT Docket No. 01-309
Governing Hearing Aid Compatible Telephones)	RM-8658
)	

COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) hereby submits comments in support of the Petitions for Reconsideration and Clarification of the Commission’s Report and Order in the above-captioned proceeding.¹ In particular, petitioners seek reconsideration of the Commission’s decisions to adopt the ANSI C63.19 standard and to impose a requirement that 25 percent and, ultimately, 50 percent of handsets meet the Commission’s hearing aid compatibility (“HAC”) requirements. In addition, petitioners seek reconsideration and clarification of certain other requirements imposed in the *HAC Order* including requirements regarding labeling, in-store live testing of handsets, reporting requirements and the consumer complaint process. While T-Mobile is committed to offering its customers hearing aid compatible handsets, it believes that certain limited modifications to the new rules regarding hearing aid compatible phones are warranted.

¹ See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid Compatible Telephones, Report and Order, WT Docket No. 01-309, RM-8658, FCC 03-168 (Aug. 14, 2003), summarized in 68 Fed. Reg. 54173 (Sept. 16, 2003) (“*HAC Order*”).

I. MODIFICATION OF THE ANSI C63.19 STANDARD

In the *HAC Order*, the Commission adopted the ANSI C63.19 standard approved in 2001, which establishes a rating system and provides a means of measuring the performance of handsets, as the standard to which handsets must comply for the purposes of determining their compatibility with hearing aids. T-Mobile agrees with CTIA that there are serious concerns regarding the usability of the ANSI C63.19 standard since the industry has had limited opportunity to test the standard. CTIA argues that the Commission should allow the appropriate standards bodies to review and complete changes to the standard and conduct field tests prior to mandating the standard.² As the Commission is aware, the industry has created within ATIS a technical “Incubator,” AISP.4-HAC, to, among other things, address changes to the standard. The Incubator, which is chaired by T-Mobile, is working with representatives of the Commission as well as the ANSI C63 committee as it considers changes to ANSI C63.19. The Incubator has already submitted some changes to the standard that were addressed at the ANSI C63 meeting the week of November 3, 2003. The ANSI C63 committee has agreed to ballot those changes and has established a means of accelerating the balloting process so that a new standard could be finalized by early 2004. Representatives of the Commission are also participating in these ANSI C63 meetings.

Although some changes to the standard are already being considered, the Incubator still has much work to do. It currently is making plans to test a number of mobile handsets; the results of which could lead to additional changes to the standard. Therefore, because an expedited process is already in place to address the standard and any changes to it, and because the Incubator is already working with Commission staff, T-Mobile recommends that the

² See CTIA Petition at 4

Commission continue its active participation in the Incubator process and work with the industry to identify changes to the standard to improve it, rather than stay the new rules as CTIA suggests.³ If, at the end of the Incubator’s analysis, significant problems still exist, T-Mobile respectfully requests that the Commission be willing to consider alternatives to the ANSI C63.19 standard.

II. Implementation Requirements Established in the HAC Order

A. Different Rules for Tier I vs. Tier II and III Carriers

The *HAC Order* requires all wireless carriers to offer two U3-rated handsets within two years. However, the Commission imposed special requirements on Tier I carriers: they must make available in two years “two phone models that meet the U3 requirements, or 25% of the wireless phone models it offers, whichever is greater.”⁴ The decision to impose more rigorous obligations on Tier I carriers is not explained. The Commission should reconsider this decision.

There is no basis in law, policy, logic or common sense for treating carriers differently based on whether they are a Tier I carrier or a Tier II or III carrier. A Tier I carrier, T-Mobile competes with Tier II carriers in many markets. However, Tier II carriers need provide only two HAC-compliant phone models, while, as a Tier I carrier, T-Mobile must ensure that 25 percent of all its handset models are HAC-compliant. Such discrimination contravenes the regulatory parity directive of the Omnibus Budget Reconciliation Act of 1993, and such an uneven regulatory requirement could seriously distort competition in the marketplace.

In the past, the Commission has used carrier size to determine the timing under which a carrier must begin to become compliant with new FCC rules. For example, last year, the

³ See CTIA Petition at 6

⁴ *HAC Order* ¶ 65.

Commission gave to Tier II and Tier III carriers additional time to become compliant with the E911 Phase II rules.⁵ However, the Commission has not in the past imposed different substantive rules on different carriers based on the total number of customers they serve. Indeed, only two weeks ago, the Commission held that it would be inappropriate to adopt more relaxed E911 location accuracy standards for rural wireless carriers.⁶ The same rationale dictates that any HAC requirements be applied uniformly to all carriers, regardless of their size.

As Verizon Wireless notes, any carrier regardless of size that cannot meet a FCC requirement can submit a petition for rule waiver.⁷ However, there is no basis in law or policy for the Commission to discriminate among carriers, especially when such discriminatory rules could adversely affect competition. T-Mobile encourages the Commission to eliminate the special rule it applied to Tier I carriers only, and instead to apply uniform requirements on all carriers.

B. The 25% and 50% Compliance Requirements

As noted, the *HAC Order* establishes the requirement that Tier I carriers “make available to consumers at least two phone models that meet the U3 requirements, or 25% of the wireless phone models it offers, whichever is greater”⁸ within two years of the effective date of the *HAC Order*. Furthermore, the Commission has required Tier I carriers to ensure that 50% of their handset offerings meet the U3 requirements by 2008.⁹

⁵ See *Revision of Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order to Stay, 17 FCC Rcd 14841 (2002).

⁶ See *Petition for Forbearance from E911 Accuracy Standards Imposed on Tier III Carriers for Locating Wireless Subscribers Under Rule Section 20.18(h)*, Order, WT Docket No. 02-377, FCC 03-297 (Nov. 19, 2003).

⁷ See Verizon Wireless Petition at 3.

⁸ *HAC Order* ¶ 65.

⁹ See *id.*

T-Mobile agrees with CTIA that the Commission has provided no data to support the 25 percent and 50 percent requirements.¹⁰ T-Mobile, while understanding the Commission's desire that consumers have a wide range of handset options available to them, suggests that due to the number of carriers in most markets, consumers will have numerous handsets from which to choose. For example, the Commission found in its recent *Eighth Annual CMRS Competition Report* that 83 percent of the U.S. population can choose among five or more different wireless service providers.¹¹ If each carrier offers two U3-rated phones, most American consumers would then have a choice of at least ten different HAC models from which to choose. In this regard, T-Mobile urges the Commission to carefully assess whether the size of the market for hearing aid compatible handsets is reasonably related to the number of handset models available.

In addition, as the Commission is aware, merely ensuring that a handset has a U3 or higher rating does not guarantee that it will be found usable by consumers. It is quite likely that phones which do not have a U3 or higher rating will also be found usable. At the very least, given the lack of evidence that the 25 percent and 50 percent requirements are necessary, the Commission should reconsider these requirements.

C. Labeling Requirements and Live Testing

T-Mobile requests that the Commission reconsider its requirement that the U-rating be placed on the outside of the handset box. First, labeling handset packaging with the U-rating will be meaningless to most consumers who will likely not be knowledgeable regarding the U-rating

¹⁰ CTIA Petition at 8-10.

¹¹ See *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Eighth Report, WT Docket No. 02-379, FCC 03-150, at ¶ 18 (July 14, 2003).

system. If some type of package labeling must be employed, T-Mobile believes a more consumer-friendly label should be used, as CTIA suggests.¹²

Moreover, as a practical matter, the consumer likely will not see the box until after the phone has been purchased. T-Mobile suggests that instead of labeling the box, handsets that meet the Commission's HAC requirements should be clearly identified at the point of sale, either with collateral material provided in a store or on a web site.

Second, as stated previously, the U-rating does not provide a guarantee of a certain level of performance with respect to an individual hearing aid. It is merely a predictor of usability. T-Mobile believes that a better approach would be to make the U-rating available for consumers who wish to educate themselves further regarding handsets which are deemed compliant with the Commission's rules. Additional technical information should be available inside the box and/or on manufacturers' web sites for consumers' edification and for audiologists to assist their clients in choosing a handset that might work for them.

As consumers attempt to identify a handset that will meet their needs, T-Mobile suggests the 14-day trial period for new wireless service, which is part of the voluntary Consumer Code¹³ with which T-Mobile and many other wireless carriers have agreed to abide, is a better alternative than the live testing requirement established in the *HAC Order*. The 14-day trial period will give hearing aid users the same benefits that accrue to all consumers. Rather than testing a handset for a few minutes in a retail outlet, using a handset in daily life and in different environments over a two-week period is a far more effective way to judge whether or not a handset, and a carrier's service, is suitable for a consumer's lifestyle, whether they use hearing aids or not.

¹² CTIA Petition at 11.

D. HAC Complaint Process

Both CTIA and Verizon Wireless address the Commission's decision to expand the wireline HAC complaint process, Part 68, Subpart E, to include wireless carriers. The Commission provides no reason for expanding the wireline rules to include wireless carriers.¹⁴ T-Mobile agrees with CTIA in observing that the Commission already has a process in place to manage consumer complaints *via* Part 1 Subpart E of the Commission's rules.¹⁵ Also, the Commission has established a system for educating consumers on how to submit complaints, and it has a process for tracking those complaints.¹⁶ It makes no sense to set up an entirely different system, which would potentially confuse consumers and complicate matters for carriers, for managing consumer complaints regarding hearing aid compatibility. Furthermore, as both Verizon Wireless and CTIA point out, imposing a wireline-type regulatory regime on wireless carriers is inconsistent with past Commission decisions which impose federal oversight of the wireless industry.¹⁷ Therefore, T-Mobile respectfully requests that the Commission utilize its existing consumer complaint process for HAC complaints.

E. Reporting Requirements

In the *HAC Order*, the Commission lists very specific information to be provided by carriers and manufacturers in their semi-annual HAC compliance reports. In particular, the Commission is seeking information regarding numbers of compliant and non-compliant phones and the retail availability of compliant phones. T-Mobile is concerned that such detailed information offered on an individual basis could be competitively sensitive. T-Mobile agrees

¹³ See *CTIA Consumer Code for Wireless Service*, http://www.wow-com.com/pdf/The_Code.pdf

¹⁴ *HAC Order* ¶ 95.

¹⁵ CTIA Petition at 15.

¹⁶ *Id.*

¹⁷ See Verizon Wireless Petition at 6-7, CTIA Petition at 16

with CTIA that the Commission should address how it will resolve this problem prior to the due date for the first report.¹⁸

III. CONCLUSION

In consideration of the foregoing discussion, T-Mobile respectfully requests that the Commission reconsider and/or modify certain provisions contained in its *HAC Order* as discussed above and in the Petitions for Reconsideration.

Respectfully submitted,

T-MOBILE USA, INC.

/s/Thomas J. Sugrue

Thomas J. Sugrue
Vice President, Government Affairs

Harold Salters, Director
Federal Regulatory Affairs

T-Mobile USA, Inc.
401 9th Street, N.W., Suite 550
Washington, D.C. 20004
202-654-5900

December 1, 2003

¹⁸ CTIA Petition at 12